

STATE OF MONTANA
NOTICE OF COAL LEASE SALE
AND BID INFORMATION

The State of Montana, Department of Natural Resources and Conservation, hereby notifies all interested persons that bids will be accepted for the issuance of coal mining leases on the fourteen state land parcels described on the following page. The leases shall be awarded to the person bidding the highest cash bonus which is above the minimum specified below, subject to the approval of the Montana Board of Land Commissioners. The Board expressly reserves the right to reject any and all bids.

Bids must be submitted on the enclosed Department bid form and submitted in a sealed envelope to the Department of Natural Resources and Conservation, Minerals Management Bureau, P.O. Box 201601, 1625 11th Avenue, Helena MT 59620-1601. The sealed envelope must have "Coal Bid" marked in the lower left-hand corner. A pre-addressed envelope is enclosed for your convenience. Bids must be **RECEIVED** in the Helena office of the department's Minerals Management Bureau by 5:00 p.m. on February 8, 2010.

No bid deposit is required. If you are the successful bidder, you will have thirty (30) days from our notification to you in which to remit the bonus, first year rentals (\$3.00 per acre), and lease issuance fees (\$25.00 per lease)

The leases will be issued on State of Montana Coal Lease Form DS-459, a copy of which is enclosed. Major lease provisions are as follows:

Minimum Acceptable Bonus Bid: \$ 143,075,000 (approximately \$0.25 per ton)

Term: Ten years and so long thereafter as coal is produced from such lands in commercial quantities.

Royalty: 12.5% of the f.o.b. mine price of the coal prepared for shipment, including production and value-based taxes, subject to readjustment as provided in lease paragraph 8.

Rental: \$3.00 per acre per year, subject to readjustment as provided in lease paragraph 8.

Bond: Lease performance bond shall initially be set at \$2,000 per lease. Required bonding may be increased or decreased whenever Lessor determines it necessary to ensure lease compliance.

Special Conditions

Lessee must commit to a work program on the Otter Creek Area coal tracts, as specified in lease special condition 28. (A).

Lessee must consult with the Northern Cheyenne Tribe and develop written operating plans, as specified in lease special condition 28. (B).

If you have any questions, please contact the Minerals Management Bureau at 406-444-2074 or Monte Mason at 406-444-3843.

DESCRIPTION OF TRACTS OFFERED
ALL TRACTS ARE LOCATED IN POWDER RIVER COUNTY

The Department is offering the following fourteen state land parcels as a package, although separate leases will be issued for each tract. Recoverable coal reserves for the fourteen state land parcels are estimated to total 572.3 million tons. Your bid will be a total amount offered over and above the first year annual rentals as an up-front, one-time only, bonus payment.

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1. Township 3 South, Range 45 East, Section 26: All – containing 640.00 acres, more or less;
 2. Township 3 South, Range 45 East, Section 34: All – containing 640.00 acres, more or less;
 3. Township 3 South, Range 45 East, Section 36: All – containing 640.00 acres, more or less;
 4. Township 4 South, Range 45 East, Section 2: Lots 1, 2, 3, 4, S2N2, S2 – containing 637.48 acres, more or less;
 5. Township 4 South, Range 45 East, Section 6: Lots 6 - 17 (inclusive), SE4 – containing 625.71 acres, more or less;
 6. Township 4 South, Range 45 East, Section 8: Lots 1 - 8 (inclusive), E2 – containing 589.30 acres, more or less;
 7. Township 4 South, Range 45 East, Section 10: E2W2, E2 – containing 480.00 acres, more or less;
 8. Township 4 South, Range 45 East, Section 12: All – containing 640.00 acres, more or less;
 9. Township 4 South, Range 45 East, Section 14: Lots 1 - 8 (inclusive), W2 – containing 550.39 acres, more or less;
 10. Township 4 South, Range 45 East, Section 18: All – containing 640.00 acres, more or less;
 11. Township 4 South, Range 45 East, Section 20: Lots 1, 2, 3, 4, E2, E2W2 – containing 587.40 acres, more or less;
 12. Township 4 South, Range 45 East, Section 22: W2W2, E2SW4, N2NE4, SE4NE4 – containing 360 acres, more or less;
 13. Township 4 South, Range 45 East, Section 24: Lots 1 - 8 (inclusive), W2E2, E2W2 – containing 593.34 acres, more or less;
 14. Township 4 South, Range 45 East, Section 26: All – containing 640.00 acres, more or less.
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**MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
COAL LEASE COMPETITIVE BID FORM
OTTER CREEK COAL TRACTS**

Instructions

1. Fill out this bid form completely and sign at the bottom. All signatures must be notarized.
 2. Bid form must be **RECEIVED** in the Helena office of the department's Minerals Management Bureau by 5:00 p.m. on February 8, 2010.
 3. The completed bid form must be submitted in a sealed envelope to the Department of Natural Resources and Conservation, Minerals Management Bureau, P.O. Box 201601, 1625 11th Avenue, Helena MT 59620-1601. The sealed envelope must have "Coal Bid" marked in the lower left-hand corner. A pre-addressed envelope is attached to this form for your convenience.
 4. The bonus bid represents an offer to pay the specified amount as a one-time, up-front bonus payment in return for receiving the fourteen coal leases. This payment is in addition to the lease issuance fee (\$25.00 per lease) and annual advance rentals required per the terms of the coal leases.
 5. The Montana Board of Land Commissioners expressly reserves the right to reject any and all bids.
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TOTAL BONUS BID PAYMENT OFFERED: (U.S. \$) _____

BIDDER INFORMATION

Please fill out the following information for name and address as you want it to appear on the leases. Please also include a phone number where you can be contacted.

APPLICANT NAME: _____

ADDRESS: _____

PHONE NUMBER: _____

BIDDER SIGNATURE: _____

BIDDER NAME/TITLE: _____

(Please Print or Type)

Subscribed and sworn before me this _____ day of _____, 2010

Notary Public for the State of _____
Residing at _____
My Commission expires _____

State of Montana
COAL LEASE

DS-459
Amended 12/21/2009

No. _____

THIS LEASE is made and entered into between the State of Montana, by and through its lawfully qualified and acting Board of Land Commissioners, hereinafter referred to as "Lessor", and

<Lessee Name and Address>

hereinafter referred to as "Lessee", under and pursuant to the authority granted Lessor by the terms and provisions of Title 77, Chapter 3, Part 3, MCA, and all acts amendatory thereof and supplementary thereto, and all rules adopted pursuant thereto.

IT IS MUTUALLY UNDERSTOOD, AGREED AND COVENANTED BY AND BETWEEN THE PARTIES TO THIS LEASE AS FOLLOWS:

1. GRANTING CLAUSE. The Lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth, does hereby grant and lease to the Lessee, for the purpose of mining and disposing of coal and constructing all such works, buildings, plants, structures and appliances as may be necessary and convenient to produce, save, care for, dispose of and remove said coal, and for the reclamation thereafter, all the lands herein described as follows:

Land Located in: _____ County: _____

Description of land: _____

Total number of acres, more or less, _____, belonging to _____ Grant.

All rights granted to Lessee under this Lease are contingent upon Lessee's compliance with the Montana Strip Mine Siting Act and the Montana Strip and Underground Mine Reclamation Act (Title 82, Chapter 4, Parts 1 and 2, MCA) and upon Lessor review and approval of Lessee's mine operation and reclamation plan. The rights granted under this Lease are further subject to agency responsibilities and authority under the provisions of the Montana Environmental Policy Act.

2. EFFECTIVE DATE AND TERM. This Lease takes effect on <Lease Effective Date> and is granted for a primary term of ten (10) years and so long thereafter as coal is produced from such lands in commercial quantities, subject to all of the terms and conditions herein set forth. A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under Section 82-4-221, MCA, or in a mine site location permit issued under Section 82-4-122, MCA, prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

3. LEASE EXTENSION. The Board of Land Commissioners may grant reasonable extensions of the primary term of this Lease upon a showing that Lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating this Lease or is threatened with substantial economic loss due to litigation regarding this Lease or another lease in the same strip mine permit or mine site location permit held by the Lessee, state compliance with the Montana Environmental Policy Act, or adverse conditions caused by natural occurrences.

4. RIGHTS RESERVED. Lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in the lands hereby leased, except the interest conveyed by this Lease; provided, however, that Lessor hereby agrees that subsequent sales, leases or other dispositions of any interest or estate in the lands hereby leased shall be subject to the terms of this Lease and shall not interfere with the Lessee's possession or rights hereunder.

5. BOND. Lessee shall immediately upon the execution of this Lease furnish a surety bond in the amount of \$2,000, conditioned upon compliance with the provisions of this Lease, or, in the option of the Lessor, a cash deposit in the amount of \$2,000, or an irrevocable letter of credit in a form approved by Lessor drawn upon an approved bank in the same amount. All rentals, royalties and interest must be paid and all disturbance must be reclaimed to the satisfaction of Lessor prior to release of any bond. Additional bonding may be required, or reduced bonding allowed, whenever Lessor determines it is necessary, or sufficient, to ensure compliance with this Lease.

6. RENTAL. Lessee shall pay Lessor annually, in advance, for each acre or fraction thereof covered by this Lease, beginning with the date this Lease takes effect, an annual money rental of \$3.00 per acre. Rental terms are subject to readjustment as provided in Paragraph 8, but in no case shall it be less than two (2) dollars per acre.

7. ROYALTY. Lessee shall pay Lessor in money or in kind at Lessor's option a royalty on every short ton (2,000 pounds) of coal mined and produced during the term of this Lease, calculated upon the f.o.b. mine price of the coal prepared for shipment, including taxes based on production or value. Lessee shall pay a royalty of 12.5 % upon coal removed by strip, surface, or auger mining methods and a royalty of 10% for coal removed by underground mining methods. Royalty terms are subject to review and readjustment as provided in Paragraph 8, but in no case shall the royalty for the coal mined be less than ten (10) percent of the f.o.b. price of a ton prepared for shipment.

8. READJUSTMENT OF RENTAL AND ROYALTY TERMS. The Lessor reserves the right to readjust the rental and royalty terms of this Lease to reflect fair market value at the end of the primary term of ten (10 years) and at the end of each five (5) year period thereafter if the lease is producing coal in commercial quantities.

9. OFFSETTING PRODUCTION. The obligation of Lessee to pay royalties under this Lease may be reduced by the Board for coal produced from any particular tract within the Lease upon a showing by Lessee to the Board that the coal is uneconomical to mine at prevailing market prices and operating costs unless Lessor's royalty is reduced. Under no circumstances may Lessor's royalty be reduced below ten (10) percent of the coal produced and sold f.o.b. the mine site, prepared for shipment, including taxes based on production or value.

10. LESSOR NOTIFICATION AND REPORTS. Lessee shall notify Lessor prior to the commencement of any prospecting, exploration, development or production operations. As soon as any mining operations are commenced, Lessee shall submit to Lessor, on or before the last day of each month, a royalty report and payment covering the preceding calendar month, which report shall be in such form and include such information as Lessor shall prescribe. Upon request, Lessee shall also furnish to Lessor, reports, plats, and maps showing exploration data, development work, improvements, amount of leased deposits mined, contracts for sale and any other information with respect to the land leased which Lessor may require. Lessor's point of contact for all matters related to this Lease is:

Department of Natural Resources & Conservation
Minerals Management Bureau
P.O. Box 201601
1625 Eleventh Avenue
Helena, MT 59620-1601

Lessor will notify Lessee of any subsequent change in point of contact.

11. INSPECTION. Representatives of the Lessor shall at all times have the right to enter upon all parts of the leased premises for the purposes of inspection, examination, and testing that they may deem necessary to ascertain the condition of the Lease, the production of coal, and Lessee's compliance with its obligations under this Lease and to review the Lessee's records relating to operations upon and administration of the lease premises. Representatives of Lessor shall also, at all reasonable hours, have free access to all books, accounts, records, engineering data, and papers of Lessee insofar as they contain information relating to the production of coal under this Lease, the price obtained therefor, and the fair market value of the production. Lessor shall also have free access to agreements relating to production of coal under this Lease. Lessor may copy at its own expense any book, account, record, engineering data, papers, or agreements to which it has access pursuant to this paragraph.

12. CONFIDENTIALITY. Lessor agrees that Lessee may request any materials obtained by Lessor pursuant to this Lease be designated as confidential. Lessor shall agree to keep any information so designated strictly confidential if Lessor determines that confidentiality is not unlawful. Further, the parties agree that the information Lessee is obliged to provide pursuant to this Lease is only that information relating to the reasonable administration and enforcement by Lessor of the provisions of this Lease and state law.

13. ASSIGNMENT. This Lease may not be assigned without the prior approval of Lessor in writing. Assignments must be made in accordance with any statutes or administrative rules pertaining to assignments in effect at the time of assignment. Each Lessee executing this Lease, or accepting an assignment of an interest in this Lease, is jointly and severally liable for all obligations attributable to the entire working interest under this Lease. Assignments may not extend the expiration date of this Lease.

14. CANCELTION. Lessee may surrender and relinquish this Lease by giving written notice to the Lessor at least thirty (30) days prior to the anniversary date of the Lease. It is understood and agreed that the Lessor hereby reserves the right to declare this Lease forfeited and to cancel the same through the Board of Land Commissioners upon failure of Lessee to fully discharge any of the obligations provided herein, after written notice from the Department and reasonable time fixed and allowed by it to Lessee for the performance of any undertaking or obligation specified in such notice concerning which Lessee is in default. Lessee, upon written application therefor, shall be granted a hearing on any notice or demand of the Department before the Lease may be declared forfeited or canceled.

15. SURRENDER OF PREMISES. Upon the termination of this Lease for any cause, Lessee shall surrender possession of the leased premises to Lessor, subject to Lessee's right to re-enter (1) for the purpose of removing all machinery and improvements belonging to Lessee, hereby granted at any time within six (6) months after the date of such termination, except those improvements as are necessary for the preservation of the deposit and access to the deposit, which improvements shall become the property of Lessor; and (2) for the purpose of complying with State and Federal laws adopted pursuant to the police power of State or Federal government. If any of the property of Lessee is not removed from the leased premises as herein provided, the same shall be deemed forfeited to Lessor and become its property.

16. PROTECTION OF THE SURFACE, NATURAL RESOURCES, AND IMPROVEMENTS. Lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) damaging crops, including forage, timber, or improvements of a surface owner; or (3) damaging range improvements whether owned by Lessor or by its grazing permittees or lessees. The lessee shall not pollute or deplete surface or groundwater in excess of those impacts to water allowed by state or federal law or permit. Upon any partial or total relinquishment or the cancellation or expiration of this Lease, or at any other time prior thereto when required by Lessor and to the extent deemed necessary by Lessor, Lessee shall fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, reclaim the disturbed area to a condition in keeping with the concept of the best beneficial use, including the removal of structures as and if required. Lessor may prescribe the steps to be taken and reclamation to be made with respect to the land and improvements thereon. Nothing in this section limits Lessee's obligation to comply with any applicable state or federal law, rule, ~~or~~ regulation, or permit.

17. TAXES. Lessee shall pay when due all taxes lawfully assessed and levied upon improvements, output of mines, or other rights, property or assets of the Lessee.

18. SUCCESSORS IN INTEREST. Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors and assigns of the respective parties hereto.

19. COMPLIANCE WITH LAWS AND RULES. This Lease is subject to further permitting under the provisions of Title 75 or 82, Montana Code Annotated. Lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted and which do not impair the obligations of this lease and do not deprive the Lessee of an existing property right recognized by law.

20. WATER RIGHTS. Lessee may not interfere with any existing water right owned or operated by any person. Lessee shall hold Lessor harmless against all claims, including attorney fees, for damages claimed by any person asserting interference with a water right.

21. MINE SAFETY. Lessee agrees to operate the mine in accordance with rules promulgated by the Mine Safety and Health Administration for the health and safety of workers and employees.

22. WASTE PROHIBITED. All mining operations shall be done in good and workmanlike manner in accordance with approved methods and practices using such methods to insure the extraction of the greatest amount of economically minable and saleable mineral, having due regard for the prevention of waste of the minerals developed on the land, the protection of the environment and all natural resources, the preservation and conservation of the property for future use, and for the health and safety of workers and employees.

23. SURRENDER OF DATA. All geological data pertaining to the leased premises, including reports, maps, logs and other pertinent data regarding trust resources shall be given to the Lessor upon surrender, termination, or expiration of the Lease. Lessor may refuse to release bond until surrender of such data to the Lessor. All drill core unused or undamaged by testing shall be saved. Upon surrender, termination, or expiration of the lease, Lessee shall contact the State Geologist, Montana Bureau of Mines and Geology, Butte, Montana, to determine if such drill core is of interest to the State Geologist for the drill core library. Any drill core determined by the State Geologist to be of interest shall be forwarded by Lessee, at Lessee's cost, to the drill core library.

24. WEED CONTROL. Lessee is responsible for controlling noxious weeds on the leased premises and shall prevent or eradicate the spread of noxious weeds onto land adjoining the leased premises in consultation with any local weed control board.

25. SURFACE OWNER AND SURFACE LESSEE RIGHTS. Lessee shall notify the surface owner, if the surface owner is not the Lessor, and any surface lessee of the location of any facilities or access roads on the leased premises prior to their construction.

26. DAMAGES. Where Lessor owns the surface estate above the leased premises, Lessee shall compensate Lessor or Lessor's surface lessees or permittees for all damages to authorized improvements on the leased premises, including penalties and charges assessed by the FSA on CRP lands, as a result of Lessee's prospecting, exploration, development or mining operations. All such damages will be assessed by and paid directly to the Lessor. Lessee shall also make all payments required by law to surface owners and lessees if Lessor is not the owner of the surface estate above the leased premises.

27. INDEMNIFICATION. The Lessee shall protect, defend, and save the Lessor, its agents and employees harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death, which injury, death or damage, in whole or in part, arises out of or in any way results from the negligent, wanton, or willful acts or omissions of the Lessee, its contractors, agents or subcontractors.

28. SPECIAL CONDITIONS.

(A) **DILIGENCE.** The Lessee hereby commits to a work program on the Otter Creek Area Coal Tracts with a minimum expenditure of \$2.0 million per lease year, for a period of five (5) years following the date this Lease takes effect, and at least \$500,000 per lease year thereafter. For the purposes of this Lease commitment, the Otter Creek Area Coal Tracts includes all State and non-State coal located within the areas identified as "Tract #'s 1, 2, and 3" on the attached Exhibit A. Within 120 days following the end of each lease year, the Lessee shall provide Lessor an accounting of Work (as later defined) performed on the Otter Creek Area Coal Tracts for such lease year. Any amount in excess of the minimum expenditure amount is referred to as the "Excess Amount" and any shortfall is referred to as the "Shortfall Amount." Within 120 days following the end of each lease year, the Lessee shall pay to Lessor the amount, if any, equal to the Shortfall Amount for such lease year, less the sum of the Excess Amounts for all prior lease years (to the extent such Excess Amounts have not been previously applied against a Shortfall Amount). For purposes of calculating the minimum expenditure, the Lessee may only include costs for work directly attributable to the Otter Creek Area Coal Tracts. Work to be performed on the Otter Creek Area Coal Tracts may include, without limitation, environmental baseline studies, exploration drilling, initiation of

permitting and all permitting actions, acquisition of surface rights and access rights over or to the Otter Creek Area Coal Tracts, title curative actions, market studies, compiling mine economics, preparation of feasibility studies and any other works, study or verifiable third party expense required to commence operations for the mining of coal on the Otter Creek Area Coal Tracts (collectively, the “Work”). The accounting of Work does not include payments made to non-State Lessors for shortfalls in work program expenditures. In the event any of the Work is conducted by Lessee’s employees, the actual verifiable salaries, wages and personal expenses of Lessee’s employees either temporarily or permanently assigned to the development and operation of the Otter Creek Area Coal Tracts may be included in the minimum expenditure. Lessee shall not include any internal overhead of any nature in calculating the minimum expenditure. If it is anticipated that the Work conducted by Lessee’s employees will exceed 50% of the minimum expenditure, the Lessee will seek Lessor’s approval for such amounts over 50%. In addition, taxes and assessments Lessee pays shall not be included in calculating the minimum expenditure. Copies of all analyses, data and other information produced or compiled as a result of Lessee’s work program on the Otter Creek Area Coal Tracts will be provided to Lessor within 120 days after the end of each lease year. However, such analyses, data and other information submitted to Lessor shall be subject to the confidentiality provisions of Paragraph 12 and 77-3-308, MCA.

(B) SETTLEMENT AGREEMENT. After the conclusion of any exploration operations and before conducting any mining, construction or other operations on any portion of the Otter Creek Area Coal Tracts (singly and collectively “Operations”), the Lessee or its agents in close consultation with the Northern Cheyenne Tribe (“Tribe”), shall develop and submit for approval to the Lessor, obtain Lessor approval of, and thereafter implement the five written Operating Plans as detailed in the attached Exhibit B of the Settlement Agreement dated February 19, 2002, between the Lessor and the Northern Cheyenne Tribe.

29. NON-WARRANTY OF TITLE. Regardless of any of the above provisions of this Lease, actual or implied, the State of Montana does not warrant title to its lands.

IN WITNESS WHEREOF, the parties hereto set their hands and Lessor has caused this agreement to be executed with the official seal of the State Board of Land Commissioners on this ____ day of _____, 2010.

THE STATE OF MONTANA
Lessor

<lessee name>
Lessee

By Its State Board of Land Commissioners

By: _____

Its: _____

DIRECTOR

Otter Creek Area Coal Tracts

Tract #1

Tract #3

Tract #2

LEGEND

- Tracts
- Section Lines
- Streams
- State Tracts for Lease

SURFACE OWNERSHIP

- BLM
- USFS
- State
- Private
- Federal Coal

MONTANA

0.5 0 0.5 1 1.5 2 Miles

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EXHIBIT B

Operating Plans

After the conclusion of any exploration operations and before conducting any mining, construction or other operations on any portion of the Otter Creek Tracts (singly and collectively "Operations"), the project operator in close consultation with the Northern Cheyenne Tribe ("Tribe"), shall develop and submit for approval to the Montana State Board of Land Commissioners ("Board"), obtain Board approval of, and thereafter implement, the following written Operating Plans:

1. Employment Program. A written Employment Program designed to provide meaningful and substantial employment opportunity in Operations, without any preferences or quotas, to enrolled members of federally-recognized Indian Tribes who resided on or near the Northern Cheyenne Reservation during the one-year period preceding their application for employment ("Indians") and to non-Indians who resided on the Reservation, in the off-Reservation communities of Ashland or Birney, or in Powder River County during the one-year period preceding their application for employment ("Other Local Residents"), to the extent such Indians and Other Local Residents are qualified and available and reside no more than 50 road miles from the Operations. The Employment Program shall address recruitment, training, hiring, promotion, reductions in workforce and termination for cause, in all categories of employment, and shall include:

- a. Programs for recruitment of Indians and Other Local Residents.
- b. Programs for training Indians and Other Local Residents, including entry-level training, on-the-job training, and training for advancement into supervisory positions.
- c. Preservation of the project operator's authority to establish reasonable, even-handed and job-validated training programs, employment criteria, and work rules for all project employees including Indians and Other Local Residents.

- d. Workshops for other project workforce to develop an awareness of relevant Indian culture and concerns and an understanding of the need for and requirements of the Employment Program.
- e. A requirement that contractors and subcontractors engaged in Operations assume and comply with all terms and conditions of the Employment Program reasonably adaptable to their own employment practices.
- f. Notification to any involved labor union of the existence of the Employment Program and the project operator's duty and intent to abide by its terms, and accommodation of the Employment Program in any union collective bargaining agreement covering Operations.
- g. Employment by the project operator of a Facilitator, who shall be a qualified and available enrolled member of the Tribe approved by the Northern Cheyenne Tribal Council and acceptable to the project operator, whose principal and primary duties shall be to: (a) serve as liaison between the project operator and the Tribe with respect to the Employment Program and the Contracting Program established under section 2 below; (b) assist in facilitating the successful implementation of the Employment Program and Contracting Program; and (c) assist in resolving any problems which may arise in implementing the Employment Program or Contracting Program.
- h. A board of Administrators, consisting of equal numbers of Administrators separately designated by the Tribe and the project operator, which shall monitor compliance with and serve as a forum to discuss and resolve by agreement any disputes regarding the interpretation or implementation of the Employment Program or the Contracting Program.

2. Contracting Program. A written Contracting Program designed to provide meaningful and substantial opportunity, without preferences or quotas, to qualified and available businesses majority-owned and controlled by the Northern Cheyenne Tribe or its members ("Tribal Contractors"), to obtain contracts and subcontracts for services or goods in the conduct of Operations at competitive prices. The Contracting Program shall include:

- a. A certification procedure under which a business entity applying for the status of Tribal Contractor must seek certification from the Administrators in the following two respects:
 - i. as majority-owned and controlled by the Tribe or Tribal Members; and
 - ii. as capable of competently providing particular kinds of contract services or goods.
- b. Notice to certified Tribal Contractors of Operations contracts and subcontracts to be awarded for which they are qualified.
- c. A requirement that project contractors and subcontractors involved in Operations assume and comply with all terms and conditions of the Contracting Program reasonably adaptable to their own project contracting activities.

3. On-Reservation Conduct. A written On-Reservation Conduct Program designed to encourage employees and truckers involved in Operations, while on the Northern Cheyenne Reservation, to comply with all relevant standards of conduct generally applicable to Northern Cheyenne Tribal members on the Reservation.

4. Environmental Monitoring. To the extent not independently required by applicable federal or State environmental law or regulations, a written Environmental Monitoring Program for state-of-the-art monitoring of air quality, visibility, water quality and biological resources on the Northern Cheyenne Reservation which may be affected adversely by Operations, including:

- a. Baseline monitoring for at least one year before the initiation of any surface disturbing Operations.
- b. Ongoing monitoring thereafter throughout the conduct of Operations, and thereafter until the completion of all required reclamation on the lands on which Operations were conducted and the release of all related reclamation bonds by regulatory agencies.

- c. Training and employment of qualified and available Indians to assume responsibility, to the fullest extent feasible, for the operation of the monitoring programs on the Reservation.
- d. In addition, full compliance by the project operator with all applicable federal and State environmental laws and regulations.

5. Cultural Resources. To the extent not independently required by applicable federal or State law or regulations, a written Cultural Resources Program designed to avoid disturbance or damage to Northern Cheyenne historic, cultural, religious and burial sites or items, including plants having cultural or religious significance, in the conduct of Operations, including:

- a. A program carried out in consultation with the Tribe, to identify, record, and protect, in accordance with Northern Cheyenne standards and protections, all Northern Cheyenne historic, cultural, religious and burial sites on the lands covered by the Lease.
- b. Re-burial, in consultation with the Tribe and in accordance with all Northern Cheyenne standards, of all Northern Cheyenne human remains and funerary objects jeopardized or disturbed by Operations.
- c. In addition, full compliance by the project operator with all applicable federal and State laws and regulations that protect Northern Cheyenne historic, cultural and religious interests and values implicated by Operations.

* * * *

Montana Code Annotated 2009

TITLE 77. STATE LANDS

CHAPTER 3

Part 3. Coal

77-3-301. Coal leases authorized. In response to an application or on its own initiative, the board may lease in a manner that it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal, upon the terms and conditions provided in this section and subject to the rules that the board prescribes.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part); amd. Sec. 4, Ch. 318, L. 2003.

77-3-302. Lands subject to coal leasing. The authority to lease extends to state lands no matter how acquired and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-303. Rules relating to coal leasing. (1) The board may adopt rules and perform all acts not inconsistent with The Enabling Act, the constitution, and the statutes of this state that it considers necessary and proper relating to the leasing of state land for coal mining purposes.

(2) The board is encouraged to lease the property interests acquired from the federal government in the Crown Butte land exchange for coal mining purposes. The proceeds from the leases must be used for the direct funding of education, including K-12 school districts, institutions of higher education, and vocational-technical education, unless otherwise provided in the transfer agreement.

History: En. Sec. 44, Ch. 60, L. 1927; re-en. Sec. 1805.44, R.C.M. 1935; R.C.M. 1947, 81-507; amd. Sec. 1, Ch. 485, L. 2001.

77-3-304. Protection of rights of purchasers or prior lessees. Whenever the leased lands are under certificate of purchase or patents have been issued and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-305. Limitations on leasing. The board shall not issue leases:

(1) to any citizen of another country or any person, partnership, corporation, association, or other legal entity controlled by interests foreign to the United States unless such country provides for similar or like privileges to citizens of the United States; or

(2) if, after a determination of the amount, location, and quality of the coal on the lands for lease, the extraction of the coal from such lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part); amd. Sec. 1, Ch. 127, L. 1983.

77-3-306. Conditions on manner of mining. (1) Every coal lease shall be conditioned upon compliance with Title 82, chapter 4, parts 1 and 2.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease after a hearing before the board.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-307. Improvements of former lessee. (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition shall be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the same to the new lessee, then the new lessee shall pay the owner the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value shall be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that the applicant has paid the owner for the improvements as agreed on between them or as fixed under the provisions of 77-6-306, that the applicant has tendered payment as fixed, or that the owner desires to remove the owner's improvements.

History: En. Sec. 43, Ch. 60, L. 1927; re-en. Sec. 1805.43, R.C.M. 1935; amd. Sec. 32, Ch. 428, L. 1973; R.C.M. 1947, 81-506; amd. Sec. 2557, Ch. 56, L. 2009.

77-3-308. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from a coal mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 3, Ch. 105, L. 1989.

77-3-309 and 77-3-310 reserved.

77-3-311. Form of lease. The board shall prescribe the form of the lease.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

77-3-312. Leasing procedures. Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on such evaluation. Leases shall be awarded by a competitive bid system, including a bonus bid for the first year's rental, and no lease shall be awarded at less than fair market value.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-313. Bond requirements. The board shall also demand a surety company bond in such form and amount as it may determine, conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease; but a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit hereinbefore provided for to such an amount as will in the judgment of the board make the furnishing of a bond unnecessary.

History: En. Sec. 42, Ch. 60, L. 1927; re-en. Sec. 1805.42, R.C.M. 1935; R.C.M. 1947, 81-505.

77-3-314. Duration of lease. (1) Coal mining leases shall be issued for a primary term of 10 years and so long thereafter as coal is produced from such lands in commercial quantities.

(2) A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine-site location permit under 82-4-122 prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

(3) For the purpose of this part, "commercial quantities" means that quantity of coal which can be sold at profit in the commercial market.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

77-3-315. Repealed. Sec. 2, Ch. 538, L. 1981.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).

77-3-316. Rental and royalty terms. (1) The compensation of the state under all coal mining leases shall be upon a rental and royalty basis and shall be fixed and determined by the board.

(2) The rental and royalty terms of each lease shall be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental shall be on a per acre basis but in no case shall it be less than \$2 per acre.

(4) The amount of such royalty shall be based upon the kind, grade, and character of the coal in each particular mine; upon the size, shape, and nature of the coal vein, strata, or body; and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor affecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than 10% of the f.o.b. mine price of a ton prepared for shipment.

History: (1), (3), (4)En. Sec. 40, Ch. 60, L. 1927; re-en. Sec. 1805.40, R.C.M. 1935; amd. Sec. 3, Ch. 358, L. 1975; Sec. 81-503, R.C.M. 1947; (2)En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; Sec. 81-502, R.C.M. 1947; R.C.M. 1947, 81-502(part), 81-503.

77-3-317. Report and payment of royalty. (1) On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes showing:

- (a) the number of tons mined during the preceding calendar month;
- (b) the price obtained therefor at the mine;
- (c) the total amount of all sales; and
- (d) any additional information required by the department.

(2) The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927; re-en. Sec. 1805.45, R.C.M. 1935; amd. Sec. 33, Ch. 428, L. 1973; R.C.M. 1947, 81-508.

77-3-318. Disposition of royalties and other receipts. All fees, rentals, royalties, and bonuses collected under state coal leases shall be paid to the department and credited as follows:

(1) All fees shall be credited to the state general fund.

(2) All rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grants to which the lands under lease belong.

History: En. Sec. 47, Ch. 60, L. 1927; re-en. Sec. 1805.47, R.C.M. 1935; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975; R.C.M. 1947, 81-510.

77-3-319 through 77-3-320 reserved.

77-3-321. Repealed. Sec. 8, Ch. 18, L. 1999.

History: En. Sec. 46, Ch. 60, L. 1927; re-en. Sec. 1805.46, R.C.M. 1935; R.C.M. 1947, 81-509.

Subchapter 3

Coal Leasing Rules

36.25.301 DEFINITIONS (1) When used herein, unless a different meaning clearly appears from the context:

(a) "Board" means the Board of Land Commissioners of the state of Montana;

(b) "Commercial quantities" means that quantity of coal which can be sold at profit in the commercial market;

(c) "Coal" means and includes black or brownish-black solid fossil fuel which has been subjected to the natural process of coalification and which falls within the classification of coal by rank: I, anthracite; II, bituminous; III, sub-bituminous; IV, lignite;

(d) "Department" means Department of Natural Resources and Conservation;

(e) "Director" means director of the Department of Natural Resources and Conservation, chief administrative officer of the department;

(f) "Interests foreign to the United States" means countries, states, or governmental subdivisions other than those within the United States of America;

(g) "Lessee" means the person in whose name and coal lease appears of record in the offices of the department, whether such person be the original lessee or a subsequent assignee. The term "lessee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder for a coal lease but with whom a formal coal lease agreement has not been completed and finalized;

(h) "Person" means any individual, firm, association or corporation or other legal entity;

(i) "Qualified applicant" means any person who may become a qualified lessee as set forth herein;

(j) "State" means the state of Montana;

(k) "State lands" means all lands the leasing of which for coal purposes is under the jurisdiction of the board;

(l) "Value" means the contract sales price as defined in 15-35-102, MCA. (History: 77-3-303, MCA; IMP, 77-3-301, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384; AMD, 2008 MAR p. 1319, Eff. 6/27/08.)

36.25.302 LANDS AVAILABLE FOR LEASING (1) State lands available for leasing by the board under these rules include state lands to which the title has vested in the state and in which the coal or coal rights are not reserved by the United States. Such state lands include those which have been sold but in which coal rights have been reserved, in whole or in part, whether such lands are under certificate of purchase or whether patents have been issued. The board in its discretion may withdraw any lands from leasing. In cases where the lands are under lease for grazing, agriculture, or similar purposes, care will be taken in issuing the coal lease to protect the rights of the purchaser or surface lessee.

(2) If after a determination of the amount, location, and quality of the coal on the lands for lease, it appears that the extraction of the coal from such lands by strip mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future, the board may not issue a lease. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.303 WHO MAY LEASE FOR COAL -- QUALIFIED LESSEES

(1) Any person qualified under the constitution and laws of the state of Montana may lease state lands for coal purposes provided that:

(a) all corporations not incorporated in Montana must obtain a certificate of authority to transact business in this state from the Secretary of State;

(b) no officer or employee of any agency of the executive department of state government who is required to inspect or examine field information in regard to prospecting for coal or the mining thereof, may take or hold such lease;

(c) the applicant, if a natural person, has reached the age of 18 years; and

(d) no citizen of a foreign country is eligible to obtain and hold a state coal lease unless the citizen's country provides for similar or like privileges to citizens of the United States. Likewise, no partnership, corporation, association, or other legal entity controlled by interests foreign to the United States is eligible to obtain and hold a state coal lease unless the entity's country provides for similar or like privileges to citizens of the United States.

(2) Any person qualified to hold a coal lease on state lands may acquire, receive and hold more than one lease. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384; AMD, 2008 MAR p. 1319, Eff. 6/27/08.)

36.25.304 PROCEDURES FOR ISSUE OF LEASE (1) The land shall be leased in as compact bodies as the form and areas of the tract held by the state and offered for lease will permit. No lease may embrace noncontiguous subdivisions of lands unless such subdivisions are within an area comprising not more than one square mile.

(2) No state coal lease may be issued until the coal resources and the surface of the tract to be leased have been evaluated as provided for in 77-3-312, MCA. No coal lease may be issued for less than the fair market value of the coal included under the lease.

(3) Tracts may be offered for lease pursuant to an application submitted by a qualified lessee, or by the department of its own volition.

(4) An application to have a tract offered for lease may be made at any time during the year on a form provided by the department:

(a) such application shall contain the information called for therein, including an adequate and sufficient description of the lands sought to be leased; and

(b) such application shall be accompanied by a \$50.00 application fee. Applications not accompanied by the application fee will not be considered.

(5) Where more than one application is filed on any one tract, the department shall notify each person submitting an application subsequent to the first qualified application that there is a prior application for that tract. All subsequent application fees shall be returned. This is the only instance in which the application fee may be refunded.

(6) When sufficient applications have been received to warrant a sale, or at the director's discretion, a lease sale will be announced.

(a) Notice of a lease sale shall be posted on the department's web site and published in a trade journal of general circulation in the coal mining industry or in the major newspapers of general circulation within Montana each week for four weeks preceding the date of sale. The notice shall identify the county or counties within which tracts are being offered for lease, state the date of the lease sale, provide instructions on how to obtain detailed information from the department on the specific tracts to be offered, and the bidding requirements and procedures.

(b) The department shall maintain a master mailing list of prospective coal lessees who request, in writing, that their names be placed on such list; and concurrently with the publication of the notice of sale in the newspapers or trade journal, the board shall mail or e-mail to each addressee on the master mailing list a copy of the notice of sale. However, such mailing shall not be deemed a legal prerequisite to a valid sale. Furthermore, the board shall have no liability to any person who may be inadvertently omitted in the mailing of such additional notices.

(c) Sales of state coal leases will be by competitive bidding. The board may call for bids on the percentage of royalty to be paid by the lessee, on a first year cash bonus to be paid by the lessee, or both; but unless the sales notices state that bids on the percentage of royalty will be called for on particular leases, all leases will be sold by bidding on the first year bonus alone.

(7) The board may require bidding to be by submission of written sealed bids, by oral bidding, or by a combination of both. When sealed bids are required, the notices of sale will so state as to particular leases and will designate a date by which bids must be submitted. Where the sales notices do not state otherwise, all bidding will be oral.

(8) Subject to the board's right to reject any and all bids:

(a) when bidding is on a cash bonus basis, the lease will be awarded to the qualified applicant who submits a bid of the highest cash amount per acre;

(b) when bidding is on a percentage of royalty basis, the lease will be awarded to the qualified bidder who submits a bid of the largest percentage of royalty to be paid. No bid of less than ten percent of the f.o.b. price of the coal prepared for shipment excluding that amount charged by the seller to pay taxes on production will be accepted; and

(c) when bidding is on a cash bonus and percentage of royalty basis the board will determine which bid is to the best advantage of the state and award the lease accordingly.

(9) When sealed bids have been required and there is a tie for high bid, the highest bidder will be determined by oral auction among the tied bidders. If no oral bid is offered which is higher than the sealed bids, the highest bidder will be determined by lot. If no bid is made on a tract offered for lease, no lease will be awarded for that tract.

(10) The department may require a bid deposit in any amount it may determine, up to ten percent of the appraised value of the coal offered for lease under any tract. When such a deposit is to be required, notice of the requirement shall be given in the notice of the lease sale.

(11) When bidding is by submission of sealed bids and a bid deposit is required the deposit shall accompany the bid. When bidding is oral and a bid deposit is required, the deposit must be submitted prior to the opening of bidding.

(12) An applicant or successful bidder shall pay a \$25.00 administrative fee for issuance of any coal lease. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384; AMD, 2008 MAR p. 1484, Eff. 6/27/08.)

Rules 36.25.305 through 36.25.308 reserved

36.25.309 RENTALS (1) An annual money rental, shall be paid to the state for each coal lease at the rate of not less than \$2.00 for each acre of land leased. Rental for the first year of the lease shall include any sums in excess of \$2.00 per acre offered and accepted as a cash bonus for such first year rental. The first year rental shall be paid before issuance of the lease. Rental for each subsequent year of the lease shall be due and payable before the beginning of that year.

(2) The annual money rental shall be in addition to any royalty payment.

(3) No partial rental payment will be accepted, and the entire rental shall be considered unpaid until the full rental payment has been received. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.310 ROYALTIES (1) The lessee shall pay in cash a royalty on all coal produced from the leased premises at a rate of not less than ten percent of the value of the coal.

(2) The fair market value of the coal shall be determined by the board in accordance with 77-3-312 and 77-3-316(4), MCA.

(3) On or before the last day of each month, every holder of a producing coal lease shall make a report to the department on a form the department prescribes, showing the number of tons mined during the preceding calendar month, the price obtained therefore at the mine, the total amount of all sales, and any additional information required by the department. The report shall be signed by the lessee or some responsible person having knowledge of the facts reported and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

(4) The lessee shall report any adjustments to the sales price of the coal which affect the sales price as previously reported in the monthly reports within 30 days of the adjustment. The royalty shall be adjusted accordingly. (History: 77-3-303, MCA; IMP, 77-3-316, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384; AMD, 2008 MAR p. 1319, Eff. 6/27/08.)

36.25.311 ASSIGNMENTS AND TRANSFERS (1) A lessee may assign any lease, either in whole or as to subdivisions of land embracing not less than 40 acres covered thereby, to any assignee qualified to be a lessee as provided under the law and these regulations. Such assignment is not, however, binding upon the state until filed with the department, accompanied by the required fees, together with proof of qualifications of the assignee as a lessee, and until the assignment is approved by the department. For the purpose of this rule, any government surveyed lot whether it contains 40 acres or more shall be assignable. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interests of the state in the premises assigned will not, in the judgment of the board, be prejudiced thereby, and the decision is subject to appeal as provided by law. Until such an assignment is approved by the department, the lessee of record shall continue fully liable and responsible for all of the requirements and obligations of the lease.

(2) In the case of a partial assignment, i.e., assignment of a full interest in only a portion of the leased premises, the department shall issue a new lease or new leases, with the same expiration date as the original lease for the assigned acreage. A new ledger sheet or sheets shall be prepared and the original lease adjusted accordingly. The original lessee and the assignee(s) assume full liability for their respective leases.

(3) The lessee may assign an undivided, fractional interest in any lease, either as to the whole of the leased premises or as to any portion thereof, by assigning title to the acreage in question to himself and the assignee. The assignment must show the respective shares of interest and may be approved by the director as a transfer of title only without recognition of any assignment of lease obligations and responsibilities.

(4) All other assignments of coal leases or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

(5) Assignments involving reservations of overriding royalties or other interests by assignee are approved by the director as a transfer of title only and without recognition of such overriding royalties or interests. Such reservations do not affect the validity of the transfer of title.

(6) An assignment or transfer must be on the form currently approved by the board. Evidence of transfers by operation of law should be in the form of a certified copy of the appropriate court order or decree or similar document, such as letters of administration to personal representatives, decree of distribution, executor's deed or sheriff's deed.

(7) The board may recognize any transfer by operation of law to an unqualified lessee for a period of time no longer than one year and only for the purpose of the further transfer of the interest.

(8) The director shall notify the parties to any assignment or other transfer submitted of approval or nonapproval thereof. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

Rule 36.25.312 reserved

36.25.313 IMPROVEMENTS OF FORMER LESSEE (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition of the improvements satisfactory to the board shall be made before a new lease is issued. If the owner of such improvement desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof to the extent they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value may be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee and the third by the two arbitrators so appointed.

(2) The reasonable compensation that the arbitrators may fix for their services shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties. However, if either party is dissatisfied with the valuation so fixed, he may within ten days appeal from their decision to the department. The department shall examine the improvements and its decision shall be final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in such proportion as in its judgment justice demands.

(3) Before the new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed upon between them or as fixed by the aforesaid arbitrators or the department, that he has tendered payment as so fixed, or that the owner desires to remove his improvements. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.314 SURRENDER OF LEASE (1) The lease may be terminated at any time by mutual consent of the lessee and the department. Such termination shall not excuse the lessee of his duty to perform obligations which have accrued or become fixed before the date of such termination. Termination shall be effective at a date agreed upon by the lessee and the department. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.315 FORFEITURE, CANCELLATION, AND TERMINATION OF LEASES (1) If the lessee fails to comply with any provisions of state law relating to coal leases, the provisions of these rules, or the provisions of its coal lease, the department shall give lessee written notice specifying such failure. Lessee shall have a period of 60 days following such notice to cure the failure so specified. Failure to so cure may result in cancellation of the lease by the board. Any lessee whose lease has been so canceled has the right to a hearing pursuant to the Montana Administrative Procedure Act and the regulations of the department. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384; AMD, 2008 MAR p. 1319, Eff. 6/27/08.)

36.25.316 OPERATING AGREEMENTS (1) Any lessee may enter into agreements with another person for mining and other operations involving coal production on state lands under his lease or leases. However, no such operating agreements are in any way binding upon the state until filed with and approved by the department. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.317 OPERATIONS ON STATE LEASES (1) A coal lease on state lands is subject to the conditions that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the cancellation of the lease.

(2) Every coal lease is conditioned upon compliance with the Montana Strip and Underground Mine and Reclamation Act and the Strip Mining Siting Act, Title 82, chapter 4, parts 2 and 1, respectively, MCA, and any other applicable laws and regulations of the state of Montana.

(3) The lessee shall allow the department to make as many inspections of the leased premises as it deems necessary and shall carry out at the lessee's expense all reasonable orders and requirements of the department relative to the prevention of waste and preservation of property. On the failure of the lessee to comply with this paragraph, the department shall have the right, together with other recourse herein provided, to enter on the property, repair damages, and prevent waste at the lessee's expense. These remedies are not exclusive and do not limit the state's other remedies of law.

(4) Upon the termination for any cause of any lease, the lessee must within six months after the date of the termination remove all machinery, fixtures, improvements, buildings and equipment belonging to him from the premises. Any machinery, fixtures, improvements, buildings and equipment belonging to any lessee and not removed within six months after the date of termination of the lease shall, upon the expiration of the six month period, become the property of the state. In special circumstances the department may allow a reasonable extension of time for removal. However, the claimant of such property of the state for salvage or otherwise, and the removal of such property from the lands, or any of such actions shall not relieve the lessee of his obligations to properly reclaim the land and restore the premises to their condition prior to mining operations as far as reasonably possible, as prescribed by Title 82, chapter 4, parts 1 and 2, MCA. If the land is leased to a new lessee prior to the expiration of the above six month period the former lessee may sell the improvements to the new lessee. If the new lessee and former lessee cannot agree upon the proper compensation for the improvements arbitration procedures as provided by these rules must be started prior to the end of the six month period. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

Rule 36.25.318 reserved

36.25.319 HEARINGS AND APPEALS (1) It is the desire and intent of the board that any lessee or prospective lessee be given full and adequate opportunity to be heard with respect to any matter affecting his interests in any particular lease. Any hearing will be conducted informally, without adherence to the strict rules of evidence of a court of law.

(2) A verbatim written record of any hearing or rehearing will be made if any party in interest so requires not less than five days prior to the day set for hearing and if the requesting party agrees to pay the cost thereof, including the cost of the original copy of the transcript. The transcript shall become a part of the case record and remain on file with the department. The party requesting such verbatim record may be required to deposit, in advance, the anticipated cost of the record. Any transcript must be certified as true, correct, and complete by the parties before it becomes part of the record. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.320 RECORDS (1) The board shall keep a record of all of its meetings in the form of minutes of such meetings, reflecting all matters considered by the board, decisions made and actions taken with respect to the leasing or possible leasing of state lands for coal. Such minutes shall be open to public inspection during normal office hours of the department. With respect to any hearing held by the board on application of any affected lessee, the minutes shall show only that such hearing was held, the nature of the hearing, and the decision reached by the board.

(2) A separate file and record shall be kept on each hearing held on application of a lessee or prospective lessee. Such separate file shall contain the written application for the hearing, a copy of the notice of the hearing, evidence of the mailing thereof, and the transcript of the hearing, if prepared.

(3) The department shall maintain a record of publication of notices of all lease sales. Such record shall consist of published copies of such notices or affidavits by each printer or publisher of the newspaper or his foreman or principal clerk, annexed to a copy of the document or notice. The record shall specify the times when and the paper in which the publication was made. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.321 FEES (1) The department shall assess the following fees:

- (a) application for coal lease - \$50.00;
- (b) issuance of each coal lease - \$25.00; and
- (c) filing each assignment affecting a coal lease, or interest therein, of whatever nature - \$10.00. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384; AMD, 2008 MAR p. 1319, Eff. 6/27/08.)

36.25.322 AMENDMENT OF RULES AND REGULATIONS (1) These rules and regulations may be altered, changed or modified at any time by action of the board in accordance with the Montana Administrative Procedure Act. No alteration, change or modification of the rules will alter, change or modify the provisions of existing leases with regard to term, rental or royalty. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)

36.25.323 IMPAIRMENT OF CONTRACT (1) Nothing in these rules may be construed to impair the obligations of any contract entered into before the effective date of Chapter 358, L. 1975. (History: 77-3-303, MCA; IMP, 77-3-303, MCA; NEW, 1979 MAR p. 734, Eff. 7/12/79; TRANS, 1996 MAR p. 2384.)